

DOCKET NO. 920840-OT

CERTIFICATION OF
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES
FILED WITH THE
DEPARTMENT OF STATE

I do hereby certify:

/X/ (1) The time limitations prescribed by paragraph 120.54(11)(a), F.S., have been complied with; and

/X/ (2) There is no administrative determination under section 120.54(4), F.S., pending on any rule covered by this certification; and

/X/ (3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(11)(b), F.S. They are filed not less than 28 days after the notice required by subsection 120.54(1), F.S., and;

/ (a) And are filed not more than 90 days after the notice; or

/ (b) Are filed not more than 90 days after the notice not including days an administrative determination was pending; or

/X/ (c) Are filed within 21 days after the adjournment of the final public hearing on the rule; or

/ (d) Are filed within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

/ (e) Are filed within 21 days after the date the transcript was received by this agency.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the

DOCUMENT NUMBER-DATE

02465 MAR-48

FPSC-RECORDS/REPORTING

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undersigned agency by and upon their filing with the Department of State.

<u>Rule No.</u>	<u>Rulemaking Authority</u>	<u>Specific Law Being Implemented, Interpreted or Made Specific</u>
25-22.056	120.53(1), F.S.	120.53, 120.57, 120.58, F.S.
25-22.057	120.53, F.S.	120.53, F.S.
25-22.058	120.53, F.S.	120.53, 120.58(1)(e), F.S.
25-22.0021	120.53, F.S.	120.53, F.S.

Under the provision of paragraph 120.54(13)(a), F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)


STEVE TRIBBLE, Director
Division of Records & Reporting

Number of Pages Certified

adp22.mrd

(S E A L)

1 25-22.056 Post-Hearing Filings.

2 (1) General Provisions.

3 (a) If a hearing under section 120.57, F.S., is conducted by
4 a panel of two or more Commissioners or the full Commission, all
5 parties may submit proposed findings of fact, conclusions of law,
6 and recommended orders, and or legal briefs on the issues within a
7 time designated by the presiding officer.

8 (b) If a hearing under section 120.57, F.S., is conducted by
9 a Commissioner sitting as a hearing officer, all parties and staff
10 may submit proposed findings of fact, conclusions of law, proposed
11 recommended orders which shall include a statement of the issues,
12 and exceptions to the proposed or recommended order, within the
13 time and in the format designated by the hearing officer.

14 (c) A party who fails to state or reaffirm a position on an
15 issue to the presiding officer or hearing officer at the
16 appropriate time shall be deemed to have waived that issue or
17 position.

18 (d) A party's proposed findings of fact, conclusions of law,
19 statement of issues and positions, and brief shall together total
20 no more than 60 pages and shall be filed at the same time. The
21 hearing officer or, if the hearing has been conducted by a panel or
22 the full Commission, the prehearing officer, may modify the page
23 limit for good cause shown. Lettering shall be distinct and
24 printed in type of no more than 10 characters per inch. The text
25 must be double spaced with 1-inch margins except for quoted

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1 material which may be indented and single spaced.

2 (e) Requests for oral argument shall be filed in accordance
3 with Rule 25-22.058, F.A.C.

4 (2) Proposed Findings of Fact. A party may submit proposed
5 findings of fact, ~~and~~ the hearing presiding officer or
6 Commissioner's assigned to the proceeding will rule upon each
7 finding of fact one, as required by section § 120.59(2), F.S., when
8 filed in conformance with this rule.

9 (a) Proposed findings of fact shall be entitled as such, and
10 must be presented on a document separate from all other
11 post-hearing documents memoranda.

12 (b) Each proposed finding of fact shall be separately stated,
13 numbered consecutively, and shall be a succinct statement may not
14 to exceed 3 sentences in length. be contained in extensive
15 narrative form, or Proposed findings of fact shall not contain
16 mixed questions of fact and law. Each proposed finding of fact
17 shall cite to the record, identifying the page and line of the
18 transcript or exhibit that supports the particular finding. All
19 proposed findings of fact which relate to a particular issue shall
20 be grouped together and shall identify the issue number to which
21 they relate. Any written statement that is not clearly designated
22 as a proposed finding of fact shall be considered to be legal
23 argument rather than proposed finding of fact.

24 (3) Statement of issues and positions. In any proceeding
25 where a prehearing order has been issued, and such prehearing order

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1 contains a statement of the issues as well as the positions of the
2 parties thereon, all post-hearing statements and other documents
3 filed pursuant to this rule ~~memoranda~~ shall conform to the form and
4 content of the statement of the issues and positions.

5 (a) Each party to a proceeding shall file a post-hearing
6 statement of issues and positions which shall include a summary of
7 each position of no more than 50 words, set off with asterisks. If
8 a party's position has not changed since the issuance of the
9 prehearing order, the party's post-hearing statement may simply
10 restate the prehearing position; however, if the prehearing
11 position is longer than 50 words it must be reduced to no more than
12 50 words. The 50-word limit may be modified for good cause shown.

13 In the event that a new issue is identified by a party in a
14 post-hearing statement, that new issue shall be clearly identified
15 as such, and a statement of position thereon shall be included.
16 Any issue or position not included in a post-hearing statement
17 shall be considered waived.

18 (b) A party is not required to file a post-hearing documents
19 ~~memorandum~~ in addition to the post-hearing statement, unless
20 otherwise required by the presiding officer. If a brief is filed,
21 each argument must be identified by the issue number to which it
22 relates. In the event that a party fails to file a post-hearing
23 statement in conformance with (3)(a), and no other post-hearing
24 memorandum is filed which conforms to this rule, that a party ~~so~~
25 ~~failing~~ shall have waived all issues and may be dismissed from the

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1 proceeding.

2 (4) Post-Hearing Filings When Hearing is Conducted by a
3 Hearing Officer. If a hearing under section 120.57, F.S., is held
4 before a Commissioner sitting as a hearing officer, the following
5 provisions shall apply in addition to (1)(b) through (3) of this
6 rule. Subsection (b) of the following provisions also applies when
7 the hearing has been conducted by the Division of Administrative
8 Hearings.

9 (a) Recommended or Proposed Order. The hearing officer
10 shall, within 30 days after the hearing or receipt of the hearing
11 transcript, whichever is later, file a recommended or proposed
12 order which shall include a caption, time and place of hearing,
13 appearances entered at the hearing, statement of the issues,
14 findings of fact and conclusions of law separately stated, and
15 recommendation for final Commission action.

16 (b) Exceptions. Parties and staff may file exceptions to the
17 recommended or proposed order with the Division of Records and
18 Reporting within 14 days of service of the order, and shall serve
19 copies of any such exceptions upon all parties of record and staff.
20 Such exceptions shall fully set forth the error claimed and the
21 basis in law and fact therefore, with exceptions to findings of
22 fact supported by citations to the record. A party's failure to
23 serve or file timely written exceptions shall constitute a waiver
24 of any objections to the recommended or proposed order.

25 Specific Authority: 120.53(1), F.S.

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1 | Law Implemented: 120.53, 120.57, 120.58, F.S.
2 | History: New 12/21/81, formerly 25-22.57, Amended _____.
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1 25-22.057 Recommended Order, Exceptions, Replies, Staff
2 Recommendations.

3 (1) Applicability. This rule shall apply to hearings under
4 §120.57, F.S., except hearings which are held before two or more
5 Commissioners.

6 (2) Recommended order. The presiding officer shall, within
7 thirty (30) days after the hearing or receipt of the hearing
8 transcript, whichever is later, file a recommended order which
9 shall include a caption, time and place of hearing, appearances
10 entered at the hearing, statement of the issues, findings of fact
11 and conclusions of law, separately stated, and recommendation for
12 final Commission action.

13 (3)(a) Exceptions and replies. Parties may file exceptions to
14 the recommended order with exceptions to the recommended order or
15 to a recommendation of a Commissioner sitting as a presiding
16 officer, with the Commission within fourteen (14) days of service
17 of the recommended order or recommendation, and shall serve copies
18 of any such exceptions upon all parties of record. Such exceptions
19 shall fully set forth the error claimed and the basis in law
20 therefore. A party's failure to serve or file timely written
21 exceptions shall constitute a waiver of any objections to the
22 recommended order or recommendation.

23 (b) Any other party may respond to the exceptions by filing
24 and serving such a response within ten (10) days after service of
25 the exceptions.

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1 (c) Within 30-days from the date exceptions are due to be
2 filed, the Commission staff who participated in the hearing shall
3 file their recommendation and shall serve a copy thereof on all
4 other parties.

5 (d) In the event that staff's recommendation is contrary, in
6 whole or part, to the recommended order exceptions may be filed in
7 response thereto by any party adversely affected thereby. Such
8 exceptions may address only the deviation from the presiding
9 officer's recommended order. Exceptions shall be filed within
10 14-days of service of the staff recommendation. Replies shall be
11 served within 10 days after service of the exceptions.

12 (e) Failure to file timely exceptions to a recommended order
13 or staff's recommendations shall constitute a waiver thereof, as
14 well as a waiver of any objections to the findings or conclusions
15 contained therein.

16 (4) Oral argument.

17 (a) Oral argument on exceptions or replies may be requested
18 by any party in accordance with Rule 25-22.058. However, if
19 granted, oral argument shall not be conducted earlier than fifteen
20 (15) days subsequent to service of staff recommendations.

21 (b) In the event that oral argument is held, the parties,
22 including the staff who participated in the hearing, may
23 participate and present argument, and rebuttal. The Commission may
24 inquire of the staff as to any matters touching upon their
25 recommendation or suggested order. No new or additional evidence

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1 may be taken at oral argument and, if presented, will not be
2 considered except upon the stipulation of all parties.

3 (5) Agenda conferences participation. No person other than
4 staff and the Commissioners may participate at an agenda conference
5 treating a recommendation or recommended order. Oral presentation
6 by any other person, whether by way of objection, comment, or
7 otherwise, is not permitted. The Commissioners may, at any time,
8 request a recommendation and/or suggested order from staff members
9 who did not participate at the hearing. The Division of Records
10 and Reporting shall provide a copy of the recommendation or
11 suggested order to parties of record. The staff members who
12 prepared the recommendation or suggested order may participate at
13 an agenda conference.

14 Specific Authority: 120.53, F.S.

15 Law Implemented: 120.53, F.S.

16 History: New 12/21/81, formerly 25-22.57, Repealed _____.

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1 25-22.058 Oral Argument.

2 (1) The Commission may grant oral argument upon request of
3 any party to a section 120.57, F.S. formal hearing. A request for
4 oral argument shall be contained on a separate document and must
5 accompany the pleading upon which argument is requested. The
6 request shall state with particularity why oral argument would aid
7 the Commission in comprehending and evaluating the issues before it
8 ~~raised by exceptions or responses~~. Failure to file a timely
9 request for oral argument shall constitute waiver thereof.

10 (2) If granted, oral argument shall be conducted at a time
11 and place determined by the Commission. Unless otherwise specified
12 in the notice, oral argument shall be limited to 15 minutes to each
13 party. The staff attorney may participate in oral argument.

14 (3) Requests for oral argument on recommended or proposed
15 orders and exceptions pursuant to section 120.58(1)(e), F.S., must
16 be filed no later than 10 days after exceptions are filed.

17 Specific Authority: 120.53, F.S.

18 Law Implemented: 120.53, 120.58(1)(e), F.S.

19 History: New 12/21/81, formerly 25-22.58, Amended _____.

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1 25-22.0021 Agenda Conference Participation.

2 (1) Persons who may be affected by Commission action on
3 certain items on the agenda for which a hearing has not been held
4 (other than actions on interim rates in file and suspend rate cases
5 and declaratory statements) will be allowed to address the
6 Commission concerning those items when taken up for discussion at
7 the conference.

8 (2) When a recommendation is presented and considered in a
9 proceeding where a hearing has been held, no person other than
10 staff who did not testify at the hearing and the Commissioners may
11 participate at the agenda conference. Oral or written presentation
12 by any other person, whether by way of objection, comment, or
13 otherwise, is not permitted, unless the Commission is considering
14 new matters related to but not addressed at the hearing.

15 (3) Nothing in this rule shall preclude the Commission from
16 making decisions during the course of or at the conclusion of a
17 hearing.

18 Specific Authority: 120.53, F.S.

19 Law Implemented: 120.53, F.S.

20 History: New _____.

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Rules 25-22.056, 25-22.057, 25-
22.058 and 25-22.0021
Docket No. 920840-OT

SUMMARY OF RULE

Rule 25-22.056 will be applicable to documents that either must or may be filed after a section 120.57, F.S., hearing has been conducted by a hearing officer, or a panel of the Commission or the full Commission. Restrictions are imposed on the length and format of post-hearing documents and a summary of parties' issue positions must be included. Replies to exceptions to recommended orders are not permitted. Rule 25-22.058 is amended to provide that requests for oral argument on recommended orders and exceptions must be filed within 10 days after filing exceptions. Rule 25-22.021 is created to address participation in agenda conferences. It provides for participation in discussions of items where a hearing has not been held and restricts participation where a hearing has already been held.

SUMMARY OF HEARINGS ON THE RULE

A public hearing was held by the Commission on February 16, 1993. The Commission voted to make several changes to the rules in response to comments that were filed. The Office of Public Counsel (OPC), Florida Power & Light Company (FPL), Florida Waterworks Association (FWWA), GTE Florida, Incorporated (GTE), Gulf Power Company (Gulf), Tampa Electric Company (TECO), United Telephone Company of Florida (United), the Legal Environmental Assistance Foundation (LEAF), and Mr. Ben Girtman filed comments.

Rule 25-22.056: FPL, GTE and TECO commented on the 50-word limit

50 WORDS
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FPL

on position summary statements contained in subsection (3)(a), asserting that it is inadequate for many complex issues. The Commission added a provision to the rule authorizing the prehearing officer or hearing officer to modify the word limit if good cause is shown.

TECO also stated that the rule was unfair in that the word limit only applies when a party's position has changed from its prehearing position. To correct this disparity, and to clarify the confusion it has caused some parties, the Commission deleted that provision (lines 13-15, page 3), rearranged the other provisions of the subsection, and added a provision requiring a summary of the party's position whether or not it has changed from the prehearing statement.

In response to Mr. Girtman's question about subsection (1)(d)'s restriction on the size of the printing type used in documents, the Commission replaced "11-point type" with "type of no more than 10 characters per inch."

Rule 25-22.0021: The FWWA noted that, on occasion, new matters that have not been an issue in a proceeding arise and are subsequently considered by the Commission in the same docket, although parties have not had the opportunity to address those matters or offer any evidence. The Commission changed the proposed rule to accommodate these occurrences by adding language to section (2) to allow participation by parties at an agenda conference when the Commission is considering new matters that are related to but were not addressed at the hearing.

Section (2) of the rule was changed based on comments by Mr.

Girtman to state that "written presentations" as well as "oral presentations" are not permitted at agenda conferences where a hearing has been held. Mr. Girtman also questions the meaning of section (3), providing that the Commission is not precluded from "taking action" during the course of a hearing or other duly noticed proceeding. The purpose of including this section in the agenda participation rule is to give notice that not all decisions in a proceeding are made at agenda conference and that some are "bench decisions" made during a hearing. The Commission changed the wording of the rule in an attempt to clarify its meaning.

FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

Rule 25-22.057 prescribes post-hearing procedures when hearings are conducted by one Commissioner or Division of Administrative Hearings (DOAH) Hearing Officer. The procedures are cumbersome and, if the Commission follows them in staff-assisted rate cases, it is unable to meet the statutory time limits set forth in section 367.0814, Florida Statutes. In the past, and in lieu of the Rule 25-22.057 provisions, Commissioners have issued orders establishing post-hearing procedures modelled on the Division of Administrative Hearings (DOAH) rule (Rule 22I-6.031, F.A.C.) and the Model Rules of Procedure (Rules 28-5.401 through 28-5.404, F.A.C.).

Post-hearing procedures are also prescribed by Rule 25-22.056, leading to some confusion and duplication. The rule amendments address these problems. All post-hearing procedures for filing documents are combined into Rule 25-22.056 and Rule 25-22.057 is

repealed. Certain sections apply to all hearings, and when a hearing is conducted by one Commissioner or a DOAH hearing officer, the sections addressing recommended orders and exceptions apply. Replies to exceptions are no longer authorized because of insufficient time before a final order must be entered.

Restrictions on the format and length of post-hearing pleadings are imposed in an attempt to reduce the number of unnecessarily voluminous documents filed with the Commission. These include a maximum length of 60 pages total for proposed findings of fact, conclusions of law, statement of issues and positions, and briefs; and margin and spacing requirements. A provision is added authorizing the prehearing or hearing officer to modify the page limit for good cause shown.

The revised rule provides that proposed findings of fact must cite to the record and, along with arguments, must be grouped by the issue to which they relate. In the past, post-hearing documents have not tracked the organization of the issues in the prehearing order, making it difficult to tie positions, arguments and proposed findings of fact to issues.

Provisions relating to oral argument are consolidated in the existing rule on oral argument (25-22.058) for ease of reference and to reduce confusion. To help the Commission dispose of proceedings in a timely manner, a time limit is imposed for requesting oral argument on exceptions to recommended orders.

Agenda conference participation provisions are consolidated in a new rule, Rule 25-22.0021, entitled "Agenda Conference Participation" so that all provisions regarding this subject will

be under one rule, to the extent practicable. Proceedings in which participation was not previously addressed in the rules are added to this new rule so the public may better understand when participation is authorized.